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EXAMINER

MADSEN, ROBERT A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 03/12/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n No.

09/728,697

Applicant(s)

STAGG ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-18,20-33,41,42 and 44-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-18,20-33,41,42 and 44-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

1. The Amendment filed December 26, 2002 has been entered. Claims 3, 19, 34,40,43, and 53-55 have been cancelled. Claims 1,2,4-18, 20-33,41,42, and 44-52 are pending.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,2,4,5,8,10,13,14,16,17,18,20,21,24,26,29,30,32,35, 37, 38,41,42,44,45,47,48,51,52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riddell (US 4773541) in view of Osborn (US 4397703).

4. Regarding claims 1,2,4,5,8,10,13,14,16,17,18,20,21,24,26,29,30,32,35, 37, 38,41,42,44,45,47,48,51, and 52, Riddell teaches a package and a method of packaging a product with a tear resistant film (such as polyethylene and oriented polypropylene) with a tearable tape to open the film (See Column 1, line 19 to Column 2, line 25, Column 3, line 4 to Column 4, line 9, Figures). Riddell further teaches the film must a tear strength that is sufficiently low for opening yet provide a sufficient shipping and display stiffness and durability (Column 2, lines 6-17), but is silent in teaching a puncture-propagation tear (PPT) of at least be 20 N/ply as recited in claims 1,17, and 38.

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5. Osborn is relied on as evidence of the conventionality of polyethylene films used for commercial bags used in shipping (Column 1, lines 1-25). The Osborn teaches conventional polyethylene film based packages, made of 6 mil LDPE and 9 mil LDPE, that are used for shipping products have a PPT of 48.9 N/ply and 97.9 N/ply (i.e. 11 and 22 lbf) , respectively (Columns 19 and 20, Example 7 and Table 2). Therefore it would have been obvious to select a polyethylene film of at least 20 N/ply since Riddell teaches the film must be durable and strong enough for shipping and Osborn teaches the conventional commercial polyethylene film package (i.e. commercial bags) that is durable strong enough for shipping has a PPT value of at least 20 N/ply. Thus, one would have been substituting one type of polyethylene film for another for the same purpose: mercantile packaging that is durable and suitable for shipping.

6. Claims 11 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riddell (US 4773541) in view of Osborn (US 4397703).as applied to claims 1,2,4,5,8,10,13,14,16,17,18,20,21,24,26,29,30,32,35, 37, 38,41,42,44,45,47,48,51,52 above, further in view of McClintock (US 5217307).

7. Regarding claims 11 and 27, Riddell teaches applying a tear tape, but is silent in teaching the width should be 8mm. McClintock is relied on as evidence of a conventional tear tape used to access a packaged good having width of between 3 mm and 12 mm. (Column 8, lines 35-60). Therefore, it would have been obvious to select of width of at least 8mm since it was known to use a tear tape of 3 to 12 mm to

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access packaged goods. One would have been substituting one tape for another for the same purpose: providing access to packaged good.

8. Claims 15 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riddell (US 4773541) in view of Osborn (US 4397703).as applied to claims 1,2,4,5,8,10,13,14,16,17,18,20,21,24,26,29,30,32,35, 37, 38,41,42,44,45,47,48,51,52 above, further in view of Kim (US 5203634).

9. Regarding claims 15 and 31, Riddell teaches a tearable tape strip applied to the interior surface of the film and guide tape strips applied to the exterior of the film (Column 1, lines 25-38). The tear tape strip serves as a central section that shears through opposing longitudinal edges, or guide tapes. However, Riddell is silent in teaching a tearable strip that is internally tearable mounted on *both* the exterior and interior of the film. Kim '634 teaches that applying a tearable strip to the interior of the film and the guides to the exterior of the film, like that which is taught by Riddell, results in manufacturing problems. Kim '634 teaches the problems are overcome by applying an internally tearable portion and guides on both the interior and exterior of a given container wall (Column 1, line 17 to column 2, line 53). Therefore, it would have been obvious to include an internally tearable tape strip with guide portions on both the exterior and interior of the film surface since it improves the manufacturing process and one would have been substituting one type of internally tearable tape strip design for another for the same purpose.

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10. Claims 1, 5-10,13,14,17, 21-26,29,30,33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hodson et al. (US 6316036 B1) in view of Osborn (US 4397703).

11. Regarding claims 1, 5,6,8-10,13,14,17, 21,22,24-26,29,30,33-35, Hodson et al. teach a continuous tear-resistant food package (e.g. cheese) as recited in claims 33 and 35 that is made from a multi-layer film comprising polyethylene or PVDC as recited in claims 5, 6,21 and 22 (Column 2, line 67 to column 3, line 40) having a single tearable tape strip, as recited in claims 14 and 30 (see Figures 25-29), attached to the inner layer of the film, as recited in claims 8 and 24 (Column 2, lines 57-65), that is made of tensilized PP (i.e. OPP), as recited in claims 10 and 26 (Column 2, lines 10-12, Column 4, lines 16-20), and has a tab, as recited in claims 1, 17,13,29, and 30. However, Hodson et al. are silent in teaching a puncture-propagation tear (PPT) of at least be 20 N/ply as recited in claims 1 and 17.

12. Osborn is relied on as evidence of the conventionality of polyethylene films used in commercial bags used in shipping (Column 1, lines 1-25). Osborn teaches conventional polyethylene film used for mercantile bags, like Hodson et al., have a PPT of 48.9 N/ply or 97.9 N/ply (i.e. 11 and 22 lbf), depending on their thickness (Columns 19 and 20, Example 7 and Table 2). Therefore it would have been obvious to select a polyethylene film of at least 20 N/ply since Hodson et al. teach a commercial bag with polyethylene film and Osborn teaches conventional commercial bags comprise polyethylene film has a PPT value of at least 20 N/ply. Thus, one would have been substituting one polyethylene film for another for the same purpose: a commercial bag.

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13. Regarding claims 7 and 23, Hodson et al. teach the packaging may comprise multilayer films with PP and PE (Column 2, line 49-Column 3, line 28) and include PE in a first layer (Column 3, lines 19-28) Although Hodson et al. are silent in a *second* layer is PP, since Hodson et al. teach using both PP and PE in combination to form a multilayer film and PE in a first layer to select PP as a second layer would have been an obvious matter of design choice.

14. Regarding claims 9 and 25, Hodson et al. teach the tear strip is placed on the inner surface of the bag with ink/printing disposed on an outer most surface (Column 2, line 57 to column 3, line 28) wherein the strip does not obstruct viewing the indicia.

15. Claims 11 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hodson et al. (US 6316036 B1) in view of Osborn (US 4397703) as applied to claims 1, 5-10,13,14,17, 21-26,29,30,33-35 above, further in view of McClintock (US 5217307).

16. Regarding claims 11 and 27, Hodson et al. teach applying a tear tape, but are silent in teaching the width should be 8mm. McClintock is relied on as evidence of a conventional tear tape used to access a packaged good having width of between 3 mm and 12 mm. (Column 8, lines 35-60). Therefore, it would have been obvious to select of width of at least 8mm since it was known to use a tear tape of 3 to 12 mm to access packaged goods. One would have been substituting one tape for another for the same purpose: providing access to packaged good.

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17. Claims 38,39, 45-48, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hodson et al. (US 6316036 B1) in view of Osborn (US 4397703).

18. Regarding claims 38,39, 45,47,48, and 52, Hodson et al. teach providing a continuous tear-resistant food package (e.g. cheese) as recited in claim 39 that is made from a multi-layer film comprising PVDC as recited in claim 45, (Column 2, line 67 to column 3, line 40) having a single tearable tape strip, as recited in claim 47 (see Figures 25-29), attached to the inner layer of the film, as recited in claim 48 (Column 2, lines 57-65), and has a tab, as recited in claims 38 and 52. However, Hodson et al. are silent in teaching a puncture-propagation tear (PPT) of at least 20 N/ply as recited in claim 38.

19. Osborn is relied on as evidence of the conventionality of polyethylene films used in commercial bags used in shipping (Column 1, lines 1-25). Osborn teaches conventional polyethylene film used for mercantile bags, like Hodson et al., have a PPT of 48.9 N/ply or 97.9 N/ply (i.e. 11 and 22 lbf), depending on their thickness (Columns 19 and 20, Example 7 and Table 2). Therefore it would have been obvious to select a polyethylene film of at least 20 N/ply since Hodson et al. teach a commercial bag with polyethylene film and Osborn teaches conventional commercial bags comprise polyethylene film has a PPT value of at least 20 N/ply. Thus, one would have been substituting one polyethylene film for another for the same purpose: a commercial bag.

20. Regarding claim 46, Hodson et al. teach the packaging may comprise multilayer films with PP and PE. Although Hodson et al. are silent in teaching a *first* layer of PE and a *second* layer is PP, since Hodson et al. teach using both PP and PE in



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combination to form a multilayer film, to select any particular order of PE and PP in a multi-layer structure would have been an obvious matter of design choice.

21. Claims 1,2,5,8,12,14,17,18,21,24,28,30,35,36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Union Carbide (GB 923899) in view of Osborn (US 4397703).

22. Regarding claims 1,2,5,12,14,17,18,21,24,30,35,36, Union carbide teaches a packaged good with a tear resistant polyethylene film forming an enclosed region with a tearable tape strip (Page 1, lines 11-35, 63-86, Page 2, lines 20-30, Page 3, lines 30-52, Page 3, line 115 to Page 4, line 35, Figures), but is silent the puncture-propagation tear (PPT) is at least 20 N/ply as recited in claims 1 and 17.

23. Osborn is relied on as evidence of the conventionality of polyethylene films used in mercantile packages (i.e. commercial bags, Column 1, lines 1-25). Osborn teaches conventional polyethylene film used for mercantile packages have a PPT of 48.9 N/ply or 97.9 N/ply (i.e. 11 and 22 lbf), depending on their thickness (Columns 19 and 20, Example 7 and Table 2). Therefore it would have been obvious to select a polyethylene film of at least 20 N/ply since Union carbide teaches packaged goods with polyethylene film and Osborn teaches conventional mercantile goods packaged with polyethylene film have a PPT value of at least 20 N/ply. Thus, one would have been substituting one polyethylene film for another for the same purpose: a packaged good.

24. Regarding claims 8 and 24, Union Carbide teaches the tape is secured to the inner surface ( Examples).

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25. Claims 11 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Union Carbide (GB 923899) in view of Osborn (US 4397703) as applied to claims 1,2,5,8,12,14,17,18,21,24,28,30,35,36 above, further in view of McClintock (US 5217307).

26. Regarding claims 11 and 27, Union carbide teaches applying a tear tape, but is silent in teaching the width should be 8mm. McClintock is relied on as evidence of a conventional tear tape used to access a packaged good having width of between 3 mm and 12 mm. (Column 8, lines 35-60). Therefore, it would have been obvious to select of width of at least 8mm since it was known to use a tear tape of 3 to 12 mm to access packaged goods. One would have been substituting one tape for another for the same purpose: providing access to packaged good.

27. Claims 38,42,44,45,47,48,49,51,52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Union Carbide (GB 923899) in view of Osborn (US 4397703).

28. Regarding claims 38,42,44,45,47, 49,51,52, Union carbide teaches a method of packaging an article with a tear resistant film forming an enclosed region with a tearable tape strip (See Page 1, lines 1-86, Page 2, lines 20-30, Page 3, lines 30-52, Page 3, line 115 to Page 4, line 35, Figures), but is silent the puncture-propagation tear (PPT) is at least 20 N/ply as recited in claim 38.

29. Osborn is relied on as evidence of the conventionality of polyethylene films used in mercantile packages (i.e. commercial bags, Column 1, lines 1-25). Osborn teaches conventional polyethylene film used for mercantile packages have a PPT of 48.9 N/ply

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or 97.9 N/ply (i.e. 11 and 22 lbf), depending on their thickness (Columns 19 and 20, Example 7 and Table 2). Therefore it would have been obvious to select a polyethylene film of at least 20 N/ply since Union carbide teaches packaged goods with polyethylene film and Osborn teaches conventional mercantile goods packaged with polyethylene film have a PPT value of at least 20 N/ply. Thus, one would have been substituting one polyethylene film for another for the same purpose: a packaged good.

30. Regarding claim 48, Union Carbide teaches the tape is secured on the inner surface ( Examples).

### ***Response to Arguments***

31. Applicant's arguments filed December 26, 2002 have been fully considered but they are not persuasive. Arguments directed to the actual tear resistance value are moot in view of the new rejection.

32. Applicant has amended the claims to incorporate the tear resistance of at least 20 N/ply. Applicant's arguments are directed to this feature with respect to Riddell. Applicant argues that Riddell emphasizes Kraft paper, which does not meet the tear limitation. However, applicant is reminded that disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. In re Susi, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). "A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use." In re Gurley, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994).

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33. Additionally applicant argues that Riddell teaches polyethylene films, and as evident by Table 2, page 17 (i.e. "PET ") of the present application, polyethylene films do not meet the new tear limitation. However, this argument is moot. Other polyethylene films listed in Table 2 (i.e. "Tycos") do meet the recited limitation.

***Terminal Disclaimer***

34. The terminal disclaimer filed on December 26, 2002 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of \*\*\* has been reviewed and is accepted. The terminal disclaimer has been recorded.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist at (703) 308-0061.

Robert Madsen  
Examiner  
Art Unit 1761  
March 10, 2003

  
**STEVE WEINSTEIN**  
**PRIMARY EXAMINER** 1761